



## **A Federal COVID-19 Emergency Temporary Standard: What Manufacturers Can Anticipate**

**ISSUE:** The NAM expects the Department of Labor's Occupational Health and Safety Administration to issue an emergency temporary standard within the first month of the Biden Administration. This action is intended to protect the health and safety of workers.

Any future ETS requires employers to follow a specific set of rules and regulations with penalties for noncompliance. While we lack direct visibility into what an ETS will ultimately include, information can be gleaned by reviewing four different states that have independently issued an ETS in response to COVID-19.

The federal regulations included in a potential OSHA ETS would be effective immediately and based off state actions, could include new mandates on establishing COVID-19 prevention plans, testing for employees, paid leave, reporting/tracking illnesses and other measures designed to protect workers. Businesses would be responsible for covering the costs of these expenses.

Currently, all employers have an obligation to keep workplaces "free from known hazards" by providing safe workplaces under the OSHA general duty clause. During the pandemic, the Trump Administration has not issued any new COVID-19 requirements but recommended that all businesses follow CDC guidance. A federal-driven ETS would be a significant change for the business community to meet its compliance obligations.

### **BACKGROUND:**

- OSHA is authorized to issue an emergency standard that takes immediate effect if workers are in grave danger because of new hazards. The last ETS was issued in 1972 in response to asbestos but the standard was later vacated by courts in 1984.
- Based on the state emergency standards, manufacturers should be prepared to potentially be responsible for the following costs:
  - Testing and paying normal wages for the time employees spend getting tested. Employees may not be able to return to the workplace while awaiting results.
  - New paid leave requirements: employers must maintain employee wages and benefits for the duration of the employees' exclusion from work.
  - Additional HR and paperwork resources to assure compliance.
  - Installing new equipment to protect employees from COVID-19 and paying for PPE.
- Businesses deemed critical may not be exempted from some/all ETS requirements. If the ETS allows exemptions, it will be the employer's responsibility to prove their critical nature.
- The ETS is likely to expand the definitions of "positive COVID-19 case," "high-risk exposure period," "excluding COVID-19 cases from the workplace," and "physical distancing."
- Many businesses will likely need new and more thoroughly written plans designed to communicate workplace efforts to stop the spread of COVID-19, including processes for

employees to report symptoms, accommodations for high-risk employees, testing and providing notice of a positive case. Companies may have existing written plans, but they will need to ensure any plan follows all new requirements.

#### **POTENTIAL IMPACTS:**

- Production could be negatively affected if absenteeism rates increase. This could disrupt operations and impact the current strength of the manufacturing sector.
- A new set of rigid requirements could replace some of the innovative and responsive safety measures companies have developed during the pandemic. An ETS may not be flexible to new CDC guidance as more is learned about COVID-19.
- There will likely be many unanswered questions and challenges due to the speed at which OSHA will issue an ETS. So far, ETS in [VA](#), [CA](#), [OR](#) and [MI](#) have been unclear related to employee pay and benefits, testing, reporting and recordkeeping.
- Penalties for noncompliance could be significant and publicized, even if violations are minor and do not affect workplace safety (example: recordkeeping and reporting).

#### **NAM IN ACTION:**

The NAM continues to engage representatives of the incoming administration and other policymakers about manufacturing workplace investments, increased safety protocols designed to respond to COVID-19 and best practices that have been implemented across different sectors of manufacturing since the beginning of the pandemic.

The NAM will continuously update members through webinars, direct outreach and labor and employment updates.

#### **NAM RESOURCES:**

Webinar 1/19/21 at 11 am EST: *NAM discussion on workplace safety and an emergency temporary standard.* [Register here](#). Available to all members.

Webinar 11/20/20: [OSHA Enforcement and an Emergency Standard: What You Need to Know](#) (password: #KM98sE#)

Webinar 11/19/20: *Outlook of House Democratic Priorities in the 117th Congress and Unique Insights into a President Biden OSHA* (off the record, thus please reach out to [Drew Schneider](#) for more details)

Webinar 10/20/20: *Coffee and Conversation with Principal Deputy Assistant Secretary Loren Sweatt* (off the record please see Drew Schneider for more details)

**For more information or questions, please contact Drew Schneider, Director of Labor and Employment Policy ([dschneider@nam.org](mailto:dschneider@nam.org)).**